APPENDIX A

Memorandum

February 15, 1965

SUBJECT: House Bill No. 249; An Act Relating to Water Rights; Repealing Section 75-1-3 New Mexico Statutes Annotated, 1953 Compilation (Being Laws 1907, Chapter 49, Section 3, As Amended); And Enacting a New Section 75-1-3 New Mexico Statutes Annotated, 1953 Compilation.

Section 75-1-3 of our water code in its present form gives private persons and private corporations as well as the United States and the State the right of eminent domain to acquire right-of-way for works for the storage or conveyance of water. Enactment of House Bill No. 249 would strip private persons and corporations of this right and reserve the power of condemnation for water storage and conveyance works to public bodies.

Most western states have statutes similar to the present form of Section 75-1-3 in their water codes. This granting of the power of eminent domain to private individuals and corporations recognizes that the development, distribution, and use of water is vital to the economy and the public welfare in arid and semi-arid states. The New Mexico Supreme Court has found Section 75-1-3 in its present form constitutional and the United States Supreme Court has refused to overturn a Utah Supreme Court decision holding that because of the peculiarly arid climate of that state ". . . a statute permitting condemnation of a right-of-way for a ditch of a private individual was not unconstitutional."

Section 75-1-3 which was enacted in 1907 and a similar law enacted in 1877 undoubtedly had important effect on

the development and use of water in New Mexico. Without these laws such development and use would have been reserved to public bodies and to those owning the banks of our rivers and streams.

Even under present circumstances, the provisions of Section 75-1-3 can have an extremely important effect on the growing economy of the state. The statute in its present form in effect guarantees private persons and private corporations access to water with payment for damages as assessed by the court if condemnation is necessary. If this guarantee is removed by the enactment of House Bill No. 249, perverse or curmudgeonly landowners could thwart development of our natural resources and industrial or agricultural enterprises to the detriment of the public interest in New Mexico. On the other hand, it can be argued, as it has been in several cases on statutes such as Section 75-1-3, that no private individual or corporation should have under any circumstances the power to condemn for his purpose the property of another.

House Bill No. 249 presents a policy question of profound importance which should be weighed with extreme care in the legislative process.

It is suggested that, if House Bill No. 249 is to be enacted, the amendment set forth below should be made to maintain parallelism between the provisions of sub-section A and sub-section B:

1) Page 2, line 15, delete the word "and" and insert a comma after the word "States".

2) Page 2, line 15, insert the words "and of any local body as defined by law" after the word "state".

S. E. Reynolds,
State Engineer

SER: fhm

APPENDIX B

Memorandum

February 15, 1965

TO: The Honorable Finis Leroy Heidel, Chairman,
House Judiciary Committee, and
The Honorable Alva Parker, Chairman
House Agriculture Committee

FROM: S. E. Reynolds, State Engineer

SUBJECT: House Bill No. 249, An Act Relating to Water Rights; Repealing Section 75-1-3 New Mexico Statutes Annotated, 1953 Compilation (Being Laws 1907, Chapter 49, Section 3, As Amended); And Enacting a New Section 75-1-3 New Mexico Statutes Annotated, 1953 Compilation.

Herewith for your information is a copy of a memorandum dated February 15, 1965, discussing subject bill. I would appreciate the opportunity of appearing before your committees at the hearing on this bill.

Respectfully submitted,

S. E. Reynolds,
State Engineer

SER:fhm
cc: The Honorable Bruce King